

Mail Stop Interference
P.O. Box 1450
Alexandria Va 22313-1450
Tel: 571-272-4683
Fax: 571-273-0042

Paper 28
Filed: February 9, 2009

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Merck Patent Gmbh,
Junior Party
(Application 10/239,566,
Inventors: **Friedrich Rippmann** and Klaus Ducker),

v.

Lexicon Genetics Inc.,
Senior Party
(Patent 7,229,790

Inventors: Carl Johan **Fiddle** and Brenda Gerhardt, and Yi Hu).

Patent Interference 105,594 (RES)
Technolgy Center 1600

Before: RICHARD E. SCHAFER, JAMESON LEE, and
MICHAEL P. TIERNEY, Administrative Patent Judges.

SCHAFFER, Administrative Patent Judge

Judgment - Request for Adverse - Bd.R. 127(b)

- 1 Merck has filed a notice of abandonment of the contest (Paper 27).
- 2 An abandonment of the contest is construed as a request for adverse
- 3 judgment. 37 CFR § 41.127(b)(4). Accordingly, it is

1 **ORDERED** that judgment on priority as to the subject matter of
2 Count 1 (Paper 1, p. 4) is awarded against Merck;
3 **FURTHER ORDERED** that Claims 1-9 and 11 of Merck
4 Application 10/239,566 (corresponding to Count 1) are finally refused (35
5 U.S.C. § 135(a));
6 **FURTHER ORDERED** that a copy of this judgment be made of
7 record in the files of Application 10/239,566, and Patent 7,229,790; and
8 **FURTHER ORDERED** that if there is any settlement agreement or
9 related documents which have not been filed, attention is directed to
10 35 U.S.C. § 135(c) and 37 CFR § 41.205.

/ Richard E. Schafer/)
RICHARD E. SCHAFER)
Administrative Patent Judge)
)
)
 / Jameson Lee /) BOARD OF PATENT
JAMESON LEE) APPEALS AND
Administrative Patent Judge) INTERFERENCES
)
)
 / Michael P. Tierney/)
MICHAEL P. TIERNEY)
Administrative Patent Judge)

cc (electronic filing):

Attorney for Merck:

Anthony J. Zelano, Esq.
John A. Sopp, Esq.
Millen, White, Zelano & Branigan, P.C.
2200 Clarendon Blvd.
Suite 1400
Arlington VA 22201
Tel: 703-243-6333
Fax: 703-243-6410
Email: zelano@mwzb.com
Email: sopp@mwzb.com

Attorney for Lexicon:

Lance Ishimoto, Esq.
Max Bachrach, Esq.
Lexicon Pharmaceuticals Inc.
8800 Technology Forest Place
The Woodlands, TX 77381-1160
Tel: 281-863-3333
Fax: 281-863-3335
Email: LKISHIMOTO@LEXPHARMA.COM